

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 5, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP2110**

**Cir. Ct. No. 2011GN4**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**IN THE MATTER OF THE GUARDIANSHIP AND PROTECTIVE PLACEMENT OF  
GERHARDT T.:**

**CARL T.,**

**APPELLANT,**

**V.**

**SUSAN L.,**

**RESPONDENT.**

---

APPEAL from an order of the circuit court for Langlade County:  
FRED W. KAWALSKI, Judge. *Affirmed.*

¶1 CANE, J.<sup>1</sup> Carl T., the guardian of Gerhard T.'s person, appeals a protective placement order that determined the least restrictive placement consistent with Gerhard's needs was the residence of Gerhard's spouse, Susan L. Carl argues the circuit court erroneously exercised its discretion because the court's placement subjects Gerhard to potential neglect and financial exploitation. This court concludes the circuit court's placement determination is supported by the record. Accordingly, the circuit court's order is affirmed.

### BACKGROUND

¶2 Gerhard is a seventy-six year old who suffers from dementia. In February 2011, workers from Langlade County discovered Gerhard alone, disoriented, and residing in extremely unsanitary living conditions. Gerhard's house was filled with moldy food, garbage, clutter, animal urine, and animal feces. Workers also discovered twenty-nine cats living in the residence.

¶3 Gerhard shared the residence with his wife Susan. Although Gerhard only married Susan in 2009, the two had resided together or known each other for more than twenty years. When workers discovered Gerhard and the condition of the residence, Susan was on a cruise vacation.

¶4 Gerhard was removed from the home under an emergency protective placement order. Langlade County subsequently petitioned for guardianship of Gerhard's person and his estate as well as protective placement. In June 2011, the circuit court found Gerhard incompetent, and it appointed an

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

unrelated third party as guardian of Gerhardt's estate.<sup>2</sup> As for guardian of Gerhardt's person, the court declined to appoint Susan and instead appointed Gerhardt's nephew Carl. The court also ordered that Gerhardt be protectively placed and determined the least restrictive placement for Gerhardt was Carl's residence.

¶5 In the months following the court's placement order, Carl petitioned on two occasions to modify Gerhardt's placement to a community-based residential facility (CBRF). Susan likewise petitioned on two occasions for the court to return Gerhardt to their residence. In March 2012, the court granted Carl's second petition for modification and placed Gerhardt in a CBRF.

¶6 The court reviewed its placement determination three months later at an annual review of the protective placement order. The parties again contested Gerhardt's placement, and the court held a two-day evidentiary hearing.

¶7 At the hearing, Susan opined that the CBRF was not the least restrictive placement for Gerhardt and requested that Gerhardt be returned home. She testified that Gerhardt wished to return home, speaks constantly of their farm, and is happy in her company. Susan also explained that Gerhardt is still high functioning and ambulatory. Before Gerhardt was placed in the CBRF, Susan was able to take him out in the community; however, in his current placement, she is unable to remove Gerhardt from the facility's premises. Further, Susan explained

---

<sup>2</sup> The court noted that "there is considerable evidence that [Susan] is motivated by potential financial gain. The value of [Gerhardt's] estate is considerable, although the liquid assets are being rapidly depleted."

that most of the other residents at the facility have significantly more health problems than Gerhardt.

¶8 Susan conceded that, when the case began, the living situation was terrible. She testified that she has improved the home's condition and made it safe for Gerhardt. Everything is clean and painted, and she has reduced the number of animals. Susan also has been in counseling since Gerhardt was removed, and she has taken a caregiver training class so that she knows how to care for Gerhardt.

¶9 Cheryl Martino, Gerhardt's social worker, recommended that Gerhardt remain at the CBRF. She conceded that a CBRF is more restrictive than a private home and that Gerhardt is capable of living in a private setting with twenty-four-hour supervision. Martino, however, testified that if Gerhardt is placed with Susan, she would be concerned that the circumstances that gave rise to the initial emergency protective placement would occur again. Martino then conceded that Gerhardt and Susan's home looks "grossly different," and that Susan has installed grab bars in the bathroom, alarms on the doors in case Gerhardt wanders, and has taken a caregiver class.

¶10 Susan's counselor, Patricia Gustafson, testified that when Gerhardt was removed from the home, Susan was depressed and in denial of Gerhardt's dementia. Since then, Gustafson has worked with Susan on her depression and her hoarding. Gustafson opined that Susan now had the mental stability to care for someone with dementia with some assistance in her home.

¶11 Langlade County health department director Ron Barger testified that he has worked with Susan since Gerhardt was removed from the home. Susan has since made the residence environmentally safe for Gerhardt. Barger also testified that he has twenty-two years' experience as a registered nurse, and

worked for over twenty years in caring for dementia patients. Barger explained that it is very important to keep dementia patients in a familiar environment for as long as possible to reduce their confusion, and Gerhardt has told Barger on multiple occasions that he wants to return to the farm. Barger recommended to Martino and the GAL that Gerhardt be returned to the farm as long as Gerhardt had proper supervision and care. Barger also explained that after Susan took the caregiver class, she became very proactive in caring for Gerhardt and actually made recommendations to Barger about things she could install in the home to keep Gerhardt safe.

¶12 Carl testified Gerhardt was not cognizant of where he was living and, as a result, his current placement in the CBRF was appropriate. Carl was concerned that if Gerhardt was placed with Susan, Susan would not adequately supervise him and would not allow other family members to visit Gerhardt.

¶13 In a written decision, the court determined that the least restrictive placement for Gerhardt was in Susan's care at his farm. The court found that Gerhardt's dementia was such that he would need a nursing home placement in the future but, until then, Gerhardt could reside at his farm. The court also noted that, although Carl, Martino, and the GAL believed Gerhardt should not be in Susan's care because he might again fall victim to neglect, the court would not ignore Gerhardt's desire to return home, the work Susan has completed in the last year to make the home safe for Gerhardt, and the fact that Susan and Gerhardt are married and enjoy each other's company.

¶14 However, to ensure Gerhardt's safety and comfort, the court imposed various conditions on Gerhardt's return to the farm and Susan's care. Specifically, the court required Gerhardt to be supervised at all times by either

Susan, a family member, or a trained caregiver. The court required Susan to allow Gerhardt's family to visit Gerhardt, privately if requested, at least once per week. The court also imposed strict limits on the number of animals in the home, required the home to remain sanitary and clean, and made the home subject to unannounced inspections.

## DISCUSSION

¶15 On appeal, Carl and the GAL argue the circuit court erroneously exercised its discretion by placing Gerhardt at his farm in Susan's care. WISCONSIN STAT. § 55.12(3) mandates that individuals subject to a protective placement order be placed in the least restrictive environment consistent with the individual's needs. The issue of whether Gerhardt is in the least restrictive placement is a question of fact. *Fond du Lac Cnty. v. J.G.S., Jr.*, 159 Wis. 2d 685, 687, 465 N.W.2d 227 (Ct. App. 1990.) We will search the record to support a circuit court's factual determination and we will not overturn the court's findings unless clearly erroneous. *See id.* at 687-88; *see also* WIS. STAT. § 805.17(2).

¶16 Carl and the GAL first argue that the circuit court's placement with Susan fails to protect Gerhardt from neglect and financial exploitation. They contend that, instead of focusing on the reasonableness or safety of Gerhardt's placement, the court improperly focused on Susan's progress and her desires.

¶17 This court concludes that the record supports the circuit court's determination that the least restrictive placement consistent with Gerhardt's needs is in Susan's care at the farm. The evidence shows that Gerhardt is a high-functioning, healthy, and ambulatory dementia patient. Multiple witnesses opined that Gerhardt could function in a private residence as long as he received twenty-four-hour supervision. Additionally, Gerhardt, who has been in a

relationship with Susan for more than twenty years, is happy in Susan's company and constantly asks to return home.

¶18 The record also supports the circuit court's determination that Susan is an appropriate caregiver for Gerhardt. Although the circuit court acknowledged the historical events that led to the original protective placement order, the court found that Susan had made dramatic improvements since Gerhardt was removed. Specifically, Susan engaged in counseling for over one year to work on her depression and hoarding, she cleaned the home and it has been deemed environmentally safe, she took a caregiver class to learn how to care for Gerhardt, and she installed safety measures to protect Gerhardt, such as door alarms, grab bars, and hand rails. Although Carl asserts that the evidence supporting Gerhardt's placement with Susan is incredible and should be disregarded, the circuit court, as fact finder, determines the weight and credibility given to witnesses' testimony. See *O'Connell v. Schrader*, 145 Wis. 2d 554, 557, 427 N.W.2d 152 (Ct. App. 1988). The record in this case supports the court's placement determination.

¶19 Further, this court rejects Carl's and the GAL's assertion that the court's placement with Susan subjects Gerhardt to a risk of financial exploitation. The court, in its placement determination, did not change Gerhardt's appointed guardians. Susan is still not Gerhardt's guardian of the estate, and his current guardian will continue to protect Gerhardt's financial interests.

¶20 Finally, the GAL argues that Gerhardt's placement at the farm is more restrictive than his placement in the CBRF. She points out that the court's order only requires Susan to allow visits between Gerhardt and relatives at least once per week. The GAL argues that, at a CBRF, relatives and nonrelatives could

visit Gerhardt more than once per week if the CBRF deemed it appropriate. The GAL also asserts that, given the animosity between Carl and Susan, it might be uncomfortable for Carl or others to visit Gerhardt and therefore a neutral CBRF would be a better placement.

¶21 This court rejects the GAL's arguments. First, that the court order sets minimum visitation requirements does not mean that Gerhardt will not have more than one visit per week or that nonrelatives are prohibited from visiting him. The GAL's argument that Gerhardt would receive more visitors if he was placed in a CBRF is speculative, and we will not consider it. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶22 Second, the animosity between Carl and Susan does not mean that Gerhardt should be placed in a facility instead of his house. If Carl or others are uncomfortable visiting Gerhardt at Susan's house, the court's order provides that Carl, or any other relative, may remove Gerhardt from Susan's residence during a visit and do things privately with Gerhardt, such as go to a restaurant or go on a walk.

*By the Court.*—Order affirmed

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.



